

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARLON CASTRO, OCTAVIO RANGEL,
MARTIN VASQUEZ, ALFREDO MARTINEZ,
RODOLFO MENDEZ, GERARDO ANGULO, JUAN
MARTINEZ, JOSE CERVANTES, SERGIO
SANCHEZ, ISRAEL SANCHEZ, MARTINE PEREZ,
GUILLERMO MENDOZA, OMAR CASTILLO, and
AMANDO MARTINEZ, individually and on behalf
of others similarly situated,

Plaintiffs,

-against-

SPICE PLACE, INC., SPICE AVE., INC.,
BANGKOK PALACE II, INC., SPICE CITY, INC.,
SPICE WEST, INC., KITLEN MANAGEMENT,
KITTIGRON LIRTPANARUK, and YONGYUT
LIMLEARTVATE,

Defendants.
-----X

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

ECF Case

**FLSA § 216(b) Collective
Action**

**FRCP Rule 23 Class
Action**

07 CV 4657 (RWS)(DFE)

AFFIDAVIT

PETER G. EIKENBERRY, being duly sworn, says:

1. I am a member of the bar of this Court and an attorney for plaintiffs.
2. I make this affidavit in support of plaintiffs' motion:
 - (a) to proceed as a collective action pursuant to Section 216(b) of the Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b), and
 - (b) to authorize plaintiffs to post and circulate a notice of pendency and consent to join form to all individuals who are similarly situated in this collective action, and
 - (c) to compel defendants to furnish the names and last known physical addresses of those individuals in the collective action; and
 - (d) for class certification of plaintiffs' claims under the New York Labor Law (the "NY class claims.")
3. There are 14 named plaintiffs in this matter. (see complaint, a copy of which is

attached hereto as Exhibit A) and since the inception of this action, an additional 11 of defendants' delivery persons have filed consents to become party plaintiffs under the FLSA. (See docket entries nos. 2-15, 34-5, 41, 48-50.)

4. Upon information and belief, the New York State Attorney General conducted an audit of Spice's payment practices; documents in possession of the New York State Attorney General suggest that the total number of plaintiffs is more than 60.

5. Counsel has agreed to advance all costs of this litigation with the proviso that plaintiffs reimburse counsel for all expenses whatever the outcome of the litigation.

6. I attach hereto, as exhibits, affidavits of sixteen of defendants' delivery persons:

Exhibit B: the affidavit of opt-in plaintiff Humberto Otclita, sworn to on April 12, 2008,

Exhibit C: the affidavit of opt-in plaintiff Humberto Badillo Morales, sworn to on April 12, 2008,

Exhibit D: the affidavit of opt-in plaintiff Jorge Rosas, sworn to on April 12, 2008,

Exhibit E: the affidavit of opt-in plaintiff Ramiro Lopez, sworn to on April 12, 2008,

Exhibit F: the affidavit of opt-in plaintiff Caterino de los Santos, sworn to on April 12, 2008,

Exhibit G: the affidavit of plaintiff Israel Rodriguez Sanchez, sworn to on April 12, 2008,

Exhibit H: the affidavit of opt-in plaintiff Jose Castillo, sworn to on April 12, 2008,

Exhibit I: the affidavit of plaintiff Marlon Castro, sworn to on April 12, 2008,

Exhibit J: the affidavit of opt-in plaintiff Geraldo Angulo, sworn to on April 12, 2008,

Exhibit K: the affidavit of plaintiff Omar Castillo, sworn to on April 12, 2008,
Exhibit L: the affidavit of plaintiff Martine Perez, sworn to on April 12, 2008,
Exhibit M: the affidavit of plaintiff Guillermo Fragosa Mendoza, sworn to on April 16, 2008,
Exhibit N: the affidavit of plaintiff Juan Martinez, sworn to on May 10, 2008,
Exhibit O: the affidavit of plaintiff Rodolfo Mendez, sworn to on April 12, 2008,
Exhibit P: the affidavit of plaintiff Jose Cervantes, sworn to on May 10, 2008,
Exhibit Q: the affidavit of plaintiff Martin Vasquez, sworn to on May 10, 2008, and
Exhibit R: the affidavit of Sergio Sanchez, sworn to on May 13, 2008.

7. I attach as Exhibit S three examples of instances where multiple pay stubs were issued to the same employee for the same work week, with different social security numbers.

8. I attach as Exhibit T examples of time-cards indicating employee hours in excess of 40 hours a week, for which plaintiffs allege they were not appropriately compensated, under either the FLSA or the NY class claims.

9. I attach as Exhibit U proposed notice of pendency and consent to join forms.

10. I attach as Exhibit V, the affidavit of Michael A. Faillace, sworn to on May 20, 2008

11. I am a sole proprietor of a two person law firm in New York City specializing in complex employment and commercial litigation in the Federal and State courts including FELA, ERISA, contract, banking, international, securities, antitrust, intellectual property, real estate and bankruptcy disputes.

12. I was educated at The Ohio State University (B.A. and LL.B.) where I was the

Note Editor of the Law Journal.

13. I was admitted to the bar in 1966 when I was an associate at White & Case where I worked for four years.

14. I was a candidate for U.S. Congress in Brooklyn in 1968 and 1970 between which years I was General Counsel of the Bedford Styuvesant D&S Corporation under John Doar, President.

15. I founded my own firm in 1973, which I dissolved in 1991 to become a partner in Seyfarth Shaw for almost four years through 1994; since January 1995, I have been a sole proprietor where I currently have one associate, whose resume is attached as Exhibit W, and one summer associate, whose resume is attached as Exhibit X.

16. I have been a member of New York City Bar Committee To Encourage Judicial Service (Chair 1989-1992), Orison Marden Lecture Committee (Chair 2006 to date), Committees on Federal Courts, the Judiciary, State Courts of Superior Jurisdiction, and Litigation and of the Council on Judicial Administration; I have been a member of the NYSBA Committees on Courts of Appellate Jurisdiction and Federal Courts; I have been a Vice President of the Federal Bar Council and have served on FBC Committees on Courts of the Second Circuit (Chair 2000-2003) and Public Service (Founding Chair 1989-1992) and I was a founding member of the Board of Editors and am current Editor in Chief of the *Federal Bar Council Newsletter*.

17. I was a co-author with (now judge) Sidney H. Stein of the FBC's *Proposed Deposition Rules for the Second Circuit*, 131 F.R.D. 613 (1990); and a co-author of *An Investor's Guide to America's Minefields, International Corporate Law* (February 1994).

18. From 1989 to 1996, I served as a Court appointed monitor under the Honorable

Robert J. Ward, District Judge, overseeing the parties' performance of a complex settlement order.


19. I am a Fellow of the New York Bar Foundation, and I am the author of Chapter 9, *Specific Performance and Rescission*, in the West publication, *Commercial Litigation in the New York State Courts* (2nd Ed. 2005.)

20. In 1989, I was the leader of a New York City Bar Association human rights mission to Northern Ireland, which mission included U.S. District Court Judges Barbara Jones and Sidney H. Stein.

21. I have worked on many class action cases over the last 42 years commencing with the over 100 Texas Gulf private shareholder cases in 1966 for which I was the day to day administrator as an associate with White & Case.

22. Currently I am an attorney for plaintiffs in five cases in which class or collective action status has been, is being or will be sought.

Wherefore, it is respectfully requested that plaintiffs' motion for certification of this action as a collective and class action be granted.


Peter G. Eikenberry

Sworn to before me this
20th day of May, 2008



Notary Public

Robert C. Ruhlin
Notary Public, State of New York
No. 01RU6154580
Qualified in New York County
Commission Expires October 23, 2010